

REMARKS:

Claims 17 and 28-31 are presented for the examiner's consideration.

Claims 18-24 and 27 are cancelled herein without prejudice. Claims 28-31 are re-presented with the filing of an RCE and the cancelling of claims 18, 19, and 21-24 so that an examination on claims 28-31 will be made.

Claims 17 stands rejected under 35 U.S.C. § 112, second paragraph. Claims 17 also stands rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,047,290 to Kennedy et al. ("Kennedy") in view of U.S. Patent No. 6,049,742 to Milne et al. ("Milne") and U.S. Patent No. 6,091,362 to Stilp et al. ("Stilp").

Reconsideration and withdrawal of the outstanding rejections is respectfully requested in light of the above amendments and following remarks.

REJECTION UNDER 35 U.S.C. § 112:

Claim 17 stands rejected under 35 U.S.C. § 112, second paragraph. The Office Action indicates that the basis of the rejection is a new Office policy to amend "media" to "computer readable media" and that such amendments will be entered after final. Accordingly, by this amendment claim 17 has been amended to change "media" to "computer readable media." Reconsideration and withdrawal of the rejection are therefore respectfully requested.

REJECTION UNDER 35 U.S.C. § 103:

Claim 17 stands rejected under 35 U.S.C. § 103(a) over Kennedy in view of Milne and Stilp.

This rejection is respectfully traversed.

Claim 17 has been amended to recite limitations including:

access data about infeasible periods of time associated with one or more respective network components, **wherein the data about infeasible**

periods of time associated with one or more respective network components comprises data about infeasible periods of time that were determined for other priority levels;

(Emphasis added). Kennedy, Milne, and Stilp, whether considered individually or in combination, fail to disclose or suggest all of the limitations of claim 17, including the specific limitations pointed out above. For example, Kennedy, Milne, and Stilp fail to disclose or suggest accessing data about infeasible periods of time associated with one or more respective network components, where the data about infeasible periods of time comprises data about infeasible periods of time that were determined for other priority levels. Since the proposed combination of Kennedy, Milne, and Stilp fails to disclose or suggest all of the limitations of claim 17, the proposed combination of Kennedy, Milne, and Stilp cannot render claim 17 obvious.

In light of the above, it is respectfully submitted that claim 17, and claims 28-31 depending from claim 17, are in condition for allowance, and notice to that effect is respectfully requested.

The Legal Standard for Obviousness Rejections Under 35 U.S.C. § 103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

CONCLUSION:

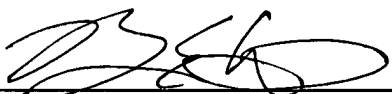
In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Enclosed herewith is a Request for Continued Examination, which includes an authorization to charge the \$790.00 fee for an RCE to **Deposit Account No. 500777**. If an extension of time is necessary for allowing the Amendment to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

6/13/2006
Date


James E. Walton, Registration No. 47,245
Daren C. Davis, Registration No. 38,425
Brian E. Harris, Registration No. 48,383
Michael Alford, Registration No. 48,707
Law Offices of James E. Walton, P.L.L.C.
1169 N. Burleson Blvd., Suite 107-328
Burleson, Texas 76028
(817) 447-9955 (voice)
(817) 447-9954 (facsimile)
jim@waltonpllc.com (e-mail)

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